

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARK-DANIEL LEITNER,

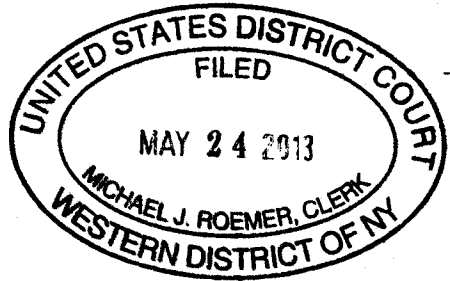
Plaintiff,

-v-

INTERNAL REVENUE SERVICE,

Defendant.

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-PS-O-

13-MC-6010CJS  
ORDER

Plaintiff Mark-Daniel Leitner, a prisoner proceeding *pro se*, filed this case on April 29, 2013, as a miscellaneous action and submitted a payment of \$46.00 for a filing fee. The complaint in the instant case is nearly identical to the civil action plaintiff previously attempted to file in 13-CV-6015CJS. Civil action 13-CV-6015CJS was administratively closed by Order dated March 28, 2013, because plaintiff's application to proceed *in forma pauperis* did not include a completed prison certification and authorization form as required by Order dated March 28, 2013.<sup>1</sup> Plaintiff did not provide the information required in 13-CV-6015CJS and that matter remains closed.

The instant case is also a civil action, and should not have been filed as a miscellaneous action. The action is converted to a civil action and shall be administratively closed.

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<sup>1</sup>Plaintiff had previously filed a similar action in 12-CV-6471CJS which was dismissed for failure to either pay the required civil action fee of \$350.00 or provide a completed prison certification and authorization form as ordered by the Court. Plaintiff did not appeal that Order.

## **In Forma Pauperis Application or Payment of Fee**

In order for a prisoner to file a civil action, either a filing fee of \$350.00 or a proper *in forma pauperis application* must be filed with the Court.<sup>2</sup> As plaintiff was previously advised in both 13-CV-6015CJS and 12-CV- 6471CJS, if he wishes to proceed *in forma pauperis* while imprisoned he must submit a motion to proceed *in forma pauperis* that includes a completed and signed Prison Certification and a signed Prison Authorization authorizing the institution in which he is confined to pay the full amount of the \$350.00 filing fee pursuant to 28 U.S.C. § 1915(b)(1)-(4).

For the reasons set forth above, plaintiff's miscellaneous filing is hereby converted to a civil action. The Clerk of the Court is ordered to administratively terminate the civil action without filing the complaint or assessing a filing fee. The civil action will be re-opened upon either the payment of the full \$350.00 filing fee or the filing of a motion to proceed *in forma pauperis* that includes a completed and signed Prison Certification and a signed Prison Authorization authorizing the institution in which he is confined to pay the full amount of the \$350.00 filing fee within 30 days.<sup>3</sup> Further, the Clerk of the Court is directed to refund the \$46.00 miscellaneous filing fee.

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<sup>2</sup> As of May 1, 2013, a \$50.00 administrative fee is required in addition to the \$350.00 filing fee for civil filings, however, plaintiff's complaint was filed on April 29, 2013 and no administrative fee is required.

<sup>3</sup> Such an administrative termination is not a "dismissal" for purposes of the statute of limitations, and if the case is reopened pursuant to the terms of this Order, it is not subject to the statute of limitations time bar if it was originally filed timely. See *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner mailbox rule); *McDowell v. Delaware State Police*, 88 F.3d 188, 191 (3d Cir. 1996); see also *Williams-Guice v. Board of Education*, 45 F.3d 161, 163 (7th Cir. 1995).

IT IS HEREBY IS ORDERED, that the Clerk of the Court shall convert this action from a miscellaneous action to a civil action and assign a civil action case number;

FURTHER, that the Clerk of the Court shall file all documents from 13-MC-6010CJS in the new civil action;

FURTHER, that the Clerk of the Court shall close 13-MC-6010CJS; and

FURTHER, that the Clerk of the Court shall refund the \$46.00 submitted upon filing of the miscellaneous action;

FURTHER, that the Clerk of the Court shall administratively terminate the new civil action, without filing the complaint or assessing a filing fee;

FURTHER, that the Clerk of the Court is directed to send to plaintiff a form motion to proceed *in forma pauperis* **and** Prison Authorization Form;

FURTHER, that if plaintiff wishes to reopen this civil action, he shall so notify the Court, in writing, no later than **30 days after the date this order is signed**; plaintiff's writing shall include either (1) a signed Prison Authorization **and** new motion to proceed *in forma pauperis* that includes a completed and signed Prison Certification, or (2) the \$350.00 filing fee;

FURTHER, that upon plaintiff's submission of either (1) a signed Prison Authorization **and** new motion to proceed *in forma pauperis* that includes a completed and signed Prison Certification, or (2) the \$350.00 filing fee, the Clerk of the Court shall re-open this civil action.

SO ORDERED.

DATED:

5/22, 2013  
Buffalo, New York



JOHN T. CURTIN  
United States District Judge